

HOUSE No. 3882

The Commonwealth of Massachusetts

INITIATIVE PETITION OF ARTHUR W. KINSMAN AND OTHERS.

OFFICE OF THE SECRETARY.
BOSTON, JANUARY 4, 2012.

Steven T. James
Clerk of the House of Representatives
State House
Boston, Massachusetts 02133

Sir: -I herewith transmit to you, in accordance with the requirements of Article XLVIII of the Amendments to the constitution, an Initiative Petition for Law entitled "An Act to Protect Motor Vehicle Owners and Small Businesses in Repairing Motor Vehicles" signed by ten qualified voters and filed with this department on or before December 7, 2011, together with additional signatures of qualified voters in the number of 83,180, being a sufficient number to comply with the Provisions of said Article.

Sincerely,

WILLIAM FRANCIS GALVIN,
Secretary of the Commonwealth.

AN INITIATIVE PETITION.

Pursuant to Article XLVIII of the Amendments to the Constitution of the Commonwealth, as amended, the undersigned qualified voters of the Commonwealth, ten in number at least, hereby petition for the enactment into law of the following measure:

The Commonwealth of Massachusetts

In the Year Two Thousand and Twelve.

**AN ACT TO PROTECT MOTOR VEHICLE OWNERS AND SMALL
BUSINESSES IN REPAIRING MOTOR VEHICLES.**

Be it enacted by the People, and by their authority, as follows:

1 SECTION 1. The General Laws of Massachusetts shall be amended by
2 inserting after chapter 93I the following new chapter 93J:-

3 **CHAPTER 93J**

4 **MASSACHUSETTS RIGHT TO REPAIR ACT**

5 Section 1. As used in this chapter, the following words shall, unless the context
6 clearly indicates a different meaning, have the following meanings:
7 "Authorized repair facility", a person or business operating in the
8 commonwealth that is affiliated, by contract or otherwise, with an authorized
9 dealer or motor vehicle manufacturer and is engaged in the diagnosis, service,
10 maintenance or repair of motor vehicles or motor vehicle engines.
11 "Dealer", a person or business authorized by a manufacturer to lease or sell the
12 manufacturer's new motor vehicles at retail; provided, however, that the dealer is
13 also engaged in the diagnosis, service, maintenance or repair of motor vehicles
14 or motor vehicle engines.

15 "Immobilizer system", an electronic device equipped on a vehicle for the sole
16 purpose of preventing the theft of that vehicle by preventing a vehicle from
17 being started unless the correct key code is present.

18 "Independent repair facility", a person or business operating in the
19 commonwealth engaged in the diagnosis, service, maintenance or repair of
20 motor vehicles or motor vehicle engines and that is not affiliated with a
21 manufacturer or a dealer.

22 "Manufacturer", any person or business engaged in the business of
23 manufacturing or assembling new motor vehicles.

24 "Owner", a person or business who owns, leases or otherwise has the legal right
25 to use and possess a motor vehicle or the agent of that person.

26 "Trade secret", anything tangible or intangible or electronically kept or stored,
27 which constitutes, represents, evidences or records a secret scientific, technical,
28 merchandising, production or management information, design, process,
29 procedure, formula, invention or improvement.

30 Section 2. Commencing with new motor vehicle model year 2015 and thereafter,
31 no manufacturer of a motor vehicle may sell or lease or offer for sale or lease,
32 directly or through a dealer, a new motor vehicle without affording to the owner
33 access to the same diagnostic and repair information relative to said new motor
34 vehicle that the manufacturer makes available to its dealers and authorized
35 repair facilities.

36 The manufacturer shall maintain a diagnostic and repair information system
37 which shall enable the owner of the motor vehicle or the owner's designated
38 independent repair facility, the capability to utilize such system via the
39 worldwide web or other electronically available manufacturer repair
40 information system on a hourly, daily, monthly or yearly subscription basis at
41 cost and terms that are no greater than fair market value and nondiscriminatory
42 as compared with the terms and costs charged to dealers or authorized repair
43 facilities.

44 Manufacturers shall provide access to their diagnostic and repair information
45 system through a non-proprietary vehicle interface that complies with SAE
46 J2534 as required by the United States Environmental Protection Agency in 40
47 CFR § 86.1808-01(f). The manufacturer's diagnostic and repair information
48 system shall provide the same diagnostic and repair information, including
49 technical updates, which the manufacturer makes available to its dealers and
50 authorized motor vehicle repair facilities. The content of said diagnostic and
51 repair information system shall be in the same form and shall be accessed in the
52 same manner as is available to dealers and authorized motor vehicle repair
53 facilities utilizing said information system. Manufacturers shall exclude
54 diagnostic, service and repair information necessary to reset a vehicle
55 immobilizer system. Information necessary to reset a vehicle immobilizer
56 system shall be obtained by dealers, authorized motor vehicle repair facilities,
57 motor vehicle owners and independent motor vehicle repair facilities through the

58 secure data release model system as currently used by the National Automotive
59 Service Task Force or other known, reliable and accepted law enforcement
60 Internet-based systems.

61 Section 3. For vehicles manufactured from 2002 through the model year 2014, a
62 manufacturer of motor vehicles sold in the commonwealth shall make available
63 for purchase by owners of motor vehicles manufactured by the manufacturer
64 and by independent repair facilities the same diagnostic and repair information,
65 including repair technical updates, that the manufacturer makes available to its
66 dealers and authorized repair facilities through the manufacturer's world wide
67 web diagnostic and repair information system or other electronically available
68 manufacturers repair information system.

69 All content of said repair information system shall be made available to owners
70 and to independent repair facilities in the same form and manner and to the
71 same extent as is made available to dealers and authorized repair facilities
72 utilizing said repair information system.

73 Manufacturers shall exclude diagnostic, service and repair information
74 necessary to reset a vehicle immobilizer system. Information necessary to reset
75 a vehicle immobilizer system shall be obtained by dealers, authorized repair
76 facilities, owners, and independent repair facilities through the secure data
77 release model system as currently used by the National Automotive Service
78 Task Force or other known, reliable and accepted law enforcement Internet-
79 based systems.

80 Access to the manufacturer's diagnostic and repair information system shall be
81 available for purchase by owners and independent repair facilities on an hourly,
82 daily, monthly or yearly subscription basis and at cost and terms that are no
83 greater than fair market value and nondiscriminatory as compared with the terms
84 and costs charged to dealers or authorized repair facilities.

85 Each manufacturer shall make available for purchase by owners and
86 independent repair facilities all diagnostic repair tools incorporating the same
87 diagnostic, repair and wireless capabilities that the manufacturer makes
88 available to its dealers and authorized motor vehicle repair facilities. These
89 tools shall incorporate the same functional repair capabilities that the
90 manufacturer makes available to dealers and authorized repair facilities. The
91 cost and other terms of any sale of such tools to owners and to independent
92 repair facilities shall be no greater than fair market value and nondiscriminatory
93 as compared to the terms and costs charged to dealers or authorized repair
94 facilities.

95 Section 4. Nothing in this chapter shall require a motor vehicle manufacturer to
96 divulge a trade secret.

97 Section 5. Nothing in this chapter shall be interpreted or construed to abrogate,
98 interfere with, contradict or alter the terms of any agreement made by a
99 manufacturer, dealer, or authorized repair facility executed and in force as of the
100 effective date of this chapter. On and after January 1, 2013, no person shall
101 make or enter an agreement that purports to waive, avoid, restrict or limit a

102 manufacturer's compliance with this chapter and any such agreement shall be
103 void and unenforceable.

104 Section 6. Any violation of this chapter shall be deemed to be an unfair method
105 of competition and an unfair or deceptive act or practice in the conduct of trade
106 or commerce in violation of section 2 of chapter 93A. In the event of a dispute
107 concerning the determination of fair market value under this chapter, the parties
108 may agree to binding arbitration under the rules of the American Arbitration
109 Association or, absent such agreement, either party may initiate an action in the
110 superior court for relief under chapter 231A.

FIRST TEN SIGNERS

<u>NAME</u>	<u>RESIDENCE</u>	<u>CITY OR TOWN</u>
Arthur W. Kinsman	56 Crescent Street	Plympton
Noreen Caroline Camelo	375 Swains Pond Avenue	Melrose
Mary Ellen Doherty	173 Woburn Street	Medford
Glenn A. Wilder	21 Cricket's Run	Hanover
John Daniel Caldwell	3 Prescott Street	Boston
Alan S. Saks	39 Canavan Drive	Braintree
Chrisann Gillen	133 Commander Shea Blvd., Apt. 806	Quincy
John D. Caldwell, Jr.	3 Prescott Street	Boston
John J. O'Neill	43 Bradfield Avenue, # 1	Boston
Richard J. Charbonnier	31 Northern Spy Road	Franklin

SUMMARY OF NO. 11-16

This proposed law would prohibit any motor vehicle manufacturer, starting with model year 2015, from selling or leasing, either directly or through a dealer, a new motor vehicle without allowing the owner to have access to the same diagnostic and repair information made available to the manufacturer's dealers and in-state authorized repair facilities.

The manufacturer would have to allow the owner, or the owner's designated in-state independent repair facility (one not affiliated with a manufacturer or its authorized dealers), to obtain diagnostic and repair information electronically, on an hourly, daily, monthly, or yearly subscription basis, for no more than fair market value and on terms that do not unfairly favor dealers and authorized repair facilities.

The manufacturer would have to provide access to the information through a non-proprietary vehicle interface, using a standard applied in federal emissions-control regulations. Such information would have to include the same content, and be in the same form and accessible in the same manner, as is provided to the manufacturer's dealers and authorized repair facilities.

For vehicles manufactured from 2002 through model year 2014, the proposed law would require a manufacturer of motor vehicles sold in Massachusetts to make available for purchase, by vehicle owners and in-state independent repair facilities, the same diagnostic and repair information that the manufacturer makes available through an electronic system to its dealers and in-state authorized repair facilities. Manufacturers would have to make such information available in the same form and manner, and to the same extent, as they do for dealers and authorized repair facilities. The information would be available for purchase on an hourly, daily, monthly, or yearly subscription basis, for no more than fair market value and on terms do not unfairly favor dealers and authorized repair facilities.

For vehicles manufactured from 2002 through model year 2014, the proposed law would also require manufacturers to make available for purchase, by vehicle owners and in-state independent repair facilities, all diagnostic repair tools, incorporating the same diagnostic, repair and wireless capabilities as those available to dealers and authorized repair facilities. Such tools would have to be made available for no more than fair market value and on terms that do not unfairly favor dealers and authorized repair facilities.

For all years covered by the proposed law, the required diagnostic and repair information would not include the information necessary to reset a vehicle immobilizer, an anti-theft device that prevents a vehicle from being started unless the correct key code is present. Such information would have to be made available to dealers, repair facilities, and owners through a separate, secure data release system.

The proposed law would not require a manufacturer to reveal a trade secret and would not interfere with any agreement made by a manufacturer, dealer, or authorized repair facility that is in force on the effective date of the proposed law. Starting January 1, 2013, the proposed law would prohibit any agreement that waives or limits a manufacturer's compliance with the proposed law.

Any violation of the proposed law would be treated as a violation of existing state consumer protection and unfair trade-practices laws.

CERTIFICATE OF THE ATTORNEY GENERAL.

September 7, 2011.

Honorable William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Room 1705
Boston, Massachusetts 02108

Re: Initiative Petition No. 11-16: Initiative Petition for An Act to Protect
Motor Vehicle Owners and Small Businesses in Repairing Motor Vehicles
(Version C1)

Dear Secretary Galvin:

In accordance with the provisions of Article 48 of the Amendments to the Massachusetts Constitution, I have reviewed the above-referenced initiative petition, which was submitted to me on or before the first Wednesday of August of this year.

I hereby certify that this measure is in proper form for submission to the people; that the measure is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections; and that it contains only subjects that are related or are mutually dependent and which are not excluded from the initiative process pursuant to Article 48, the Initiative, Part 2, Section 2.

In accordance with Article 48, I enclose a fair, concise summary of the measure

Cordially,

MARTHA COAKLEY,
Attorney General.